

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IMMIGRANT DEFENSE PROJECT,
HISPANIC INTEREST COALITION
OF ALABAMA, and the CENTER FOR
CONSTITUTIONAL RIGHTS,

Plaintiffs,

v.

UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT and
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,

Defendants.

No. 14 Civ. 6117 (JPO)

STIPULATION AND PROPOSED ORDER MODIFYING FOIA REQUEST

WHEREAS, on October 17, 2013, plaintiffs Immigrant Defense Project, Hispanic Interest Coalition of Alabama, and The Center For Constitutional Rights (“Plaintiffs”) made a request (the “Request”) pursuant to the Freedom of Information Act (“FOIA”), to United States Immigration and Customs Enforcement (“ICE”) and the United States Department of Homeland Security (“DHS,” and together with ICE, “Defendants”);

WHEREAS, the Request sought various records relating to enforcement operations conducted by ICE and/or DHS;

WHEREAS, Defendants released certain documents responsive to the Request;

WHEREAS, on August 5, 2014, Plaintiff filed this action challenging Defendants’ responses to the Request;

WHEREAS, following commencement of the suit, Defendants conducted additional searches and made new productions of responsive documents;

WHEREAS, Defendants represented in August of 2015 that they had completed their responses to the Request;

WHEREAS, the parties filed cross-motions for partial summary judgment on the adequacy of the Defendants' search, and the Court initially granted the motions in part and denied them in part in an opinion dated September 23, 2016, ECF No. 49, which opinion ordered Defendants to conduct certain additional searches;

WHEREAS, following the September 23 opinion, Defendants conducted certain additional searches and made certain additional productions;

WHEREAS, the Court granted Plaintiffs' request for partial reconsideration of the summary judgment opinion in a second opinion dated May 16, 2017, ECF No. 65, and ordered the parties to "confer and agree upon additional custodians and search terms" for certain offices within ICE;

WHEREAS, Plaintiffs and Defendants (the "Parties") wish to resolve certain aspects of this matter without further litigation;

NOW, THEREFORE, it is hereby STIPULATED and AGREED between the Parties as follows:

1. The scope of Defendants' remaining search obligation in this action (including as determined by the Court's September 23, 2016 opinion and the May 16, 2017 opinion) is governed solely by the searches set forth in the Joint Proposal for New Searches (the "Joint Proposal"), attached hereto as Exhibit 1, and not by the original Request.

2. Defendants will complete the searches set forth in the Joint Proposal by August 25, 2017.

3. Defendants will process those documents located in the searches described in the Joint Proposal by reviewing each document for responsiveness to the Request as modified by the Joint Proposal and this Stipulation and redacting or withholding information subject to applicable FOIA exemptions.

4. Starting on September 25, 2017, and on the 25th of each month thereafter (or, if that date is a weekend or federal holiday, the next business day), Defendants will produce to Plaintiffs one thousand pages of responsive documents (unless fewer than one thousand pages remain, in which case the balance will be produced), subject to redactions for any applicable FOIA exemptions.

5. Plaintiffs waive any rights to challenge through litigation, and are barred from litigating, the adequacy of any search conducted by Defendants in this action.

6. Plaintiffs waive any rights to challenge, and are barred from challenging, any exemptions asserted by Defendants in or with respect to documents produced to Plaintiffs prior to May 16, 2017.

7. Subject to the procedures given in paragraph 8 below, Plaintiffs retain their rights to challenge any exemptions asserted by Defendants in or with respect to documents processed pursuant to paragraphs 3 and 4 above (together, the “New Production”).

8. Defendants need not produce a *Vaughn* index in connection with the New Production except as described in this paragraph. Defendants will not initially provide a *Vaughn* index to the New Production. If Plaintiffs wish to challenge any exemptions in the New Production, they will first present informally to Defendants a list of disputed exemptions and

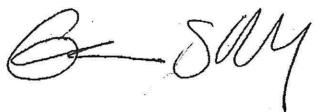
their basis for disputing each. Defendants will then provide a draft, preliminary *Vaughn* index for those particular exemptions pursuant to Federal Rule of Evidence 408 solely for the purpose of attempting to resolve the dispute without litigation. In the event the parties are not able to resolve the dispute without litigation, Defendants will file an initial summary judgment motion as to the applicability of disputed exemptions, and will include a final *Vaughn* index among the filings supporting the motion. Such final *Vaughn* index may include additional exemptions and document descriptions that were not contained in the draft, preliminary *Vaughn* index, and the omission of such information or exemptions from the draft *Vaughn* index shall not be construed as a waiver of any of the Defendants' arguments or defenses in this case. Plaintiffs may not, in connection with any litigation under this paragraph, rely on or cite to any draft *Vaughn* index described in this paragraph unless the Parties mutually agree otherwise.

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9. Plaintiffs' claim for attorneys' fees incurred in this action from its commencement to and including May 16, 2017, is preserved. Plaintiffs waive any claim or entitlement to attorneys' fees incurred in this action from May 17, 2017 onward to any time in the future, except that plaintiffs do not waive any claim to attorneys' fees they may incur in litigating their entitlement to fees described in the first sentence of this paragraph. Nothing in this paragraph modifies the substantive legal standard otherwise applicable under law governing Plaintiffs' claim for attorneys' fees.

Date: New York, New York
July 28, 2017

GHITA SCHWARZ

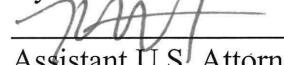


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SO ORDERED:



J. PAUL OETKEN
United States District Judge

7/31/17

EXHIBIT 1

IDP et al. v. ICE et al.: 14-cv-6117 (JPO)
JOINT PROPOSAL FOR NEW SEARCHES

A. New Orleans ERO & HSI Field Offices:

1. ICE will search for any emails, Field Operations Worksheets (“FOWs”), and I-213 forms related to the targeting, arrest and detention of the “Alabama 40” in March 2017. The Alabama 40 is a group of individuals who were detained by ICE agents and officers in the Decatur, Athens, Huntsville and Hartselle areas of north Alabama in mid-March 2017. Custodians whose records will be searched will be the Supervisory Detention & Deportation Officers for ERO, and Special Agents for HSI, who were involved in these enforcement operations. Searches will be both electronic and manual.
2. ICE will search for any emails, FOWs and I-213 forms related to the targeting, arrest and detention of individuals and around the Gardendale, Alabama courthouse in June 2017. Custodians whose records will be searched will be the Supervisory Detention & Deportation Officers for ERO, and Special Agents for HSI, who were involved in these enforcement operations. Searches will be both electronic and manual.
3. ICE will search for any emails, FOWs and I-213 forms related to the targeting, arrest and detention of immigrants in Alabama through Operation Border Guardian in 2016. Custodians whose records will be searched will be the Supervisory Detention & Deportation Officers for ERO who were involved in these enforcement operations. Searches will be both electronic and manual. Electronic searches will use the separate search terms “Operation Border Guardian” and “OBG.”
4. ICE will search for any emails, FOWs, and I-213 forms related to road blocks (“retenes”) in Blount County in May/June 2017, including information about individuals turned over by Blount County officers to ICE. Custodians whose records will be searched will be the Deputy Field Office Directors and Supervisory Detention & Deportation Officers for ERO who were involved in these enforcement operations. Searches will be both electronic and manual. Electronic searches will use the following search terms (each quoted term separately): (i) “road block,” “road blocks,” “roadblock” and “roadblocks”; (ii) “check point,” “check points,” “checkpoint,” and “checkpoints”; and (iii) “license” and “licenses.”
5. ICE will search for all contracts, cooperation agreements, or protocols, including protocols contained in email communications, between ICE and all Alabama counties and municipalities who are currently cooperating with ICE. Custodians whose records will be searched will be the Deputy Field Office Directors for ERO and Deputy Special Agents in Charge for HSI. Searches will be both electronic and manual.
6. ICE will search for any emails, communications, or MOUs, related to ICE’s use of mobile technology, including biometrics/fingerprinting devices, in the Gardendale municipal court or in connection with any other enforcement actions in Alabama.

Custodians whose records will be searched will be the Deputy Field Office Directors and Supervisory Detention & Deportation Officers for ERO and Special Agents and Deputy Special Agents in Charge for HSI who were involved in these operations. Searches will be both electronic and manual.

B. New York City ERO & HSI Field Offices:

1. ICE will search for any existing MOUs or other agreements between the New York City field offices and local police, law enforcement agencies, the NYS Office of Court Administration and the NYS Division of Criminal Justice Services about how to communicate/report to ICE. Searches will be both electronic and manual. Search of email communications containing informal agreements or discussions will be done via searching for email addresses commonly associated with the OCA, DCJS, the NYPD, NYC Probation, Nassau County Police, Suffolk County Police, etc. from 1/20/2017 to the present.
2. ICE will search for any emails, communications, and updated internal guidelines (i.e. post-dating 2006) about how agents/officers are supposed to identify themselves, including with regard to ruses and ruses using photographs of non-targets. Custodians whose records will be searched will be the Deputy Field Office Directors for ERO and Deputy Special Agents in Charge for HSI. Searches will be both electronic and manual.
3. ICE will search for any charts similar to the OPA chart with data on Operation Border Guardian for NYC operations detailing number and type of arrests, whether targets were found, collateral arrests, prosecutorial discretion, denials of entry, broken down by country of origin and county, from 1/2016 to the present.
4. ICE will search for any monthly reports of arrests by NY Field Offices (both HSI and ERO), broken down by county and country of origin and containing all other categories contained in these arrest reports, from 1/2016 to the present.
5. ICE will search for any records, emails, communications, data, meeting notes and debriefing notes for the following operations. Custodians whose records will be searched will be the Supervisory Detention & Deportation Officers for ERO and Special Agents for HSI who were involved in these enforcement operations:
 - Operation Matador (approx. 5/14/2017-6/14/2017), including those that are the subject of an ICE news release of 6/14/2017, available at <https://www.ice.gov/news/releases/operation-matador-nets-39-ms-13-arrests-last-30-days>
 - Operation(s) (both ERO & HSI) in the week that ended 4/3/2017, including those that are the subject of an ICE news release of 4/4/2017, available at <https://www.ice.gov/news/releases/31-arrested-new-york-ice-operation-targeting-criminal-alien-illegal-re-entrants>

- NY Field Operation(s) (both ERO & HSI) that are the subject of an ICE news release of 2/13/2017, available at <https://www.ice.gov/news/releases/statement-secretary-kelly-recent-ice-enforcement-actions>
- Operation(s) (both ERO & HSI) in the week that ended 8/12/2016, including those that are the subject of an ICE news release of 8/17/2016, available at <https://www.ice.gov/news/releases/ice-arrests-58-new-york-enforcement-operation-targeting-convicted-criminals>

6. ICE will search for any FOWs and I-213 forms for operations listed in New York City item (5) above, including, if available, attached photographs.